

***United States Court of Appeals
for the Second Circuit***



APPENDIX

74-1388

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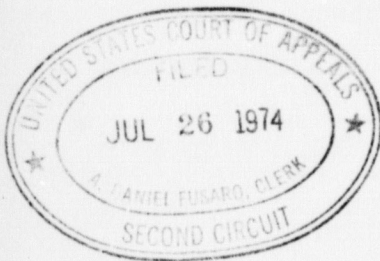
in the
United States Court of Appeals
for the **Second Circuit**

CASE NO. 74-1388

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
vs.

RAUL ORTEGA-ALVAREZ, a/k/a
RAUL ORTEGA, et al,
Defendants-Appellants.

Appeal from the United States District Court
for the Southern District of New York



APPENDIX FOR APPELLANT

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PAGINATION AS IN ORIGINAL COPY

I N D E X

	Original Record Pages	App. Pages
Indictment 73-Cr-950.	1	1
Notice of Motion S 73 C (TPG).	69	17-
Affidavit of Motion S 73 Cr (TPG).	70	19
Judgement and Commitment 74 Cr 18.	53	27
Notice of Appeal 74 Cr 18.	78	28
Transcript of Hearing on Pleas 71-281-Cr-EC. . . .	41	29
Transcript of Trial, pg.. 1767.	88	53

DOCKET ENTRIES

Proceedings

Date
1974

January 9 Indictment filed in New York, New York.

February 20 Raul Ortega through interpreter plead not guilty by reason of Double Jeopardy.

February 27 Raul Ortega filed memo endorsed on Motion - Motion denied with leave to renew at end of the governments case.

March 19 Filed copy submitted from Southern District of Florida - Hearing on Plea.

March 20 Jurors return verdict, Raul Ortega guilty on counts 1,2,3. Bail continued. Pre-sentence report ordered.

April 29 Raul Ortega filed Judgement. Adjudged that the defendant is hereby committed to custody of Attorney General or his authorized representative for imprisonment for a period of TWELVE (12) years on each of counts (2) and (3) to run concurrently with each other. May 1 - Raul Ortega filed Notice of Appeal from judgement entered on April 29, 1974.

Order of Proceedings

(1) Indictment

(69) Notice of Motion S 73 Cr (TPG)

(70) Affidavit of Motion S 73 Cr (TPG)

(53) Judgement and Commitment 74 Cr 18

(78) Notice of Appeal 74 Cr 18

(41) Transcript of Hearing on Pleas Southern District of Florida 71-281 Cr -Ec

(88) Transcript of Proceedings

UNITED STATES OF AMERICA
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- v -

✓ RAUL ORTEGA-ALVAREZ, a/k/a Raul
Ortega
CIRO RODRIGUEZ-CALANA, a/k/a Ciro A.
Calana, a/k/a Ciro Rodriguez,
FRANCISCA ORTEGA-RODRIGUEZ, a/k/a
Francisca Rodriguez, a/k/a "Paca,"
✓ LUIS REYES-PADRON, a/k/a Luis Reyes,
✓ JORGE INFIESTA, a/k/a "Hueso," a/k/a
"George,"
JOAQUIN R. PRADA, a/k/a "El Gardego,"
a/k/a "El Gallego,"
HECTOR ECHEVARRIA, a/k/a Liborio
Morales, a/k/a Hector Aronld
Echevarria-Rios,
CHARLES BUSICO-CIFRE, a/k/a Charley
Cifre, a/k/a Charley Busigo, a/k/a
Cifire,
✓ DOMINGO DEL CIPISTO,
✓ ARMANDO GARCIA-ALVAREZ, a/k/a Armando
Alvarez, a/k/a Armando Garcia, a/k/a
Andres Alvarez, a/k/a Joaquin
Gonzalez, a/k/a "El Chino,"
JOHN DOE, a/k/a "Hugo El Americano,"
a/k/a Hugo Contero Viera, a/k/a
Hugo Viera,
JOSE LUIS SARRIA, a/k/a "Pepito,"
a/k/a "Pepe," a/k/a Carlos
Hernandez,
JOHN DOE, a/k/a "Roberto,"
JOSE OTERO, a/k/a "Pepe,"
FRANCISCO ORLANDO PEREZ, a/k/a
Francisco Perez, a/k/a "Paco,"
a/k/a "Jose,"
ORLANDO GIL, a/k/a Joaquin Gil,
a/k/a Orlando Joaquin Gil, a/k/a
Joaquin Orlando Gil y Montero,
a/k/a Luis Francisco Gil,
CIRILLO FIGUEROA, a/k/a "Lazarito,"
a/k/a "Lazaro," a/k/a "El
Guajiro,"
✓ RICOBERTO ROSAL-RODRIGUEZ, a/k/a
"Blanco Serra," a/k/a "Planquito
Serra," a/k/a "Rico," a/k/a
"Rigo Rosal," a/k/a "Roberto,"
JOSE RAMIREZ-RAJOS, a/k/a Jose
Ramirez, a/k/a "Chevas,"
✓ JOHN DOE, a/k/a Roberto Lopez,
JOSE ANGEL AGUILERA, a/k/a Jose
Alberto Aguilera, a/k/a "El Moro,"
a/k/a "Mauro," a/k/a "Moscoso,"
CARLOS TAPANES, a/k/a "Charlie,"

Defendants.

INDICTMENT

73 Cr. 950

U. S. DISTRICT COURT

FILED

OCTOBER 10, 1973

S. D. OF N. Y.

COURT ONE

The Grand Jury charges:

1. From on or about the first day of December, 1969,
and continuously thereafter up to and including on or about

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April 30, 1971, in the Southern District of New York and elsewhere,

RAUL ORTEGA-ALVAREZ, a/k/a Raul Ortega,
CIRO RODRIGUEZ-CALANA, a/k/a Ciro A. Calana, a/k/a Ciro Rodriguez,
FRANCISCA ORTEGA-RODRIGUEZ, a/k/a Francisca Rodriguez, a/k/a "Paca,"
LUIS REYES-PADRON, a/k/a Luis Reyes,
JORGE INFUESTA, a/k/a "Hueso," a/k/a "George,"
JOAQUIN R. PRADA, a/k/a "El Gardego," a/k/a "El Gallego,"
HECTOR ECHEVARRIA, a/k/a Liborio Morales, a/k/a Hector Aronld Echevarria-Rios,
CHARLES BUSIGO-CIFRE, a/k/a Charley Cifre, a/k/a Charley Busigo, a/k/a Cifire,
DOMINGO DEL CRISTO,
ARMANDO GARCIA-ALVAREZ, a/k/a Armando Alvarez, a/k/a Armando Garcia, a/k/a Andres Alvarez, a/k/a Jonquin Gonzalez, a/k/a "El Chino,"
JOHN DOE, a/k/a "Hugo El Americano," a/k/a Hugo Contero Viera, a/k/a Hugo Viera,
JOSE LUIS SARRIA, a/k/a "Pepito," a/k/a "Pepe," a/k/a Carlos Hernandez,
JOHN DOE, a/k/a "Roberto,"
JOSE OTERO, a/k/a "Pepe,"
FRANCISCO ORLANDO PEREZ, a/k/a Francisco Perez, a/k/a "Paco," a/k/a "Jose,"
ORLANDO GIL, a/k/a Joaquin Gil, a/k/a Orlando Joaquin Gil, a/k/a Joaquin Orlando Gil y Montero, a/k/a Luis Francisco Gil,
CIRILLO FIGUEROA, a/k/a "Lazarito," a/k/a "Lazaro," a/k/a "El Guajiro,"
RIGOBERTO ROSAL-RODRIGUEZ, a/k/a "Blanco Serra," a/k/a "Blanquito Serra," a/k/a "Rigo," a/k/a "Rigo Rosal," a/k/a "Roberto,"
JOSE RAMIREZ-RAMOS, a/k/a Jose Ramirez, a/k/a "Chevas,"
JOHN DOE, a/k/a Roberto Lopez,
JOSE ANGEL ACUILERA, a/k/a Jose Alberto Aguilera, a/k/a "El Moro," a/k/a "Mauro," a/k/a "Moscoso,"
CARLOS TAPANES, a/k/a "Charlie,"

the defendants, and Ramiro Gonzalez and Miguel Rodriguez, named herein as co-conspirators but not as defendants, and others to the Grand Jury known and unknown, unlawfully wilfully, intentionally and knowingly combined, conspired, confederated and agreed together and with each other to violate Sections 173 and 174 of Title 21, United States Code and Sections 4701, 4703, 4704(a), 4771(a) and 7237(a) of Title 26, United States Code.

2. It was part of said conspiracy that the said defendants and co-conspirators unlawfully, wilfully and knowingly

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would import and bring into the United States large quantities of narcotic drugs, the exact amount and nature thereof being to the Grand Jury unknown in violation of Sections 173 and 174 of Title 21, United States Code.

3. It was further part of said conspiracy that the said defendants and co-conspirators, unlawfully, wilfully and knowingly would receive, conceal, possess, buy, sell and facilitate the transportation, concealment and sale of large quantities of narcotic drugs, the exact amount and nature thereof being to the Grand Jury unknown, after the said narcotic drugs had been imported and brought into the United States contrary to law, knowing that the said narcotic drugs had been imported and brought into the United States contrary to law in violation of Section 173 and 174 of Title 21, United States Code.

4. It was further part of the said conspiracy that the said defendants and co-conspirators unlawfully, wilfully and knowingly would purchase, sell, dispense and distribute a quantity of narcotic drugs, the exact amount and nature thereof being to the Grand Jury unknown, in that the said narcotic drugs would not be in the original stamped package or from the original stamped package, that is to say, that there would not be affixed to the container in and from which the said defendants would purchase, sell, dispense and distribute the narcotic drugs as aforesaid any United States Internal Revenue Stamps as required by Section 4703 of Title 26, United States Code, in violation of Sections 4701, 4703, 4704(a), and 7237(a) of Title 26, United States Code.

OVERT ACTS

In pursuance of the said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York and elsewhere:

1. In or about March, 1970, the defendant RAUL ORTEGA-ALVAREZ met with co-conspirator Ramiro Gonzalez in Miami, Florida.

2. In or about March, 1970, the defendant RAUL ORTEGA-ALVAREZ and co-conspirator Ramiro Gonzalez flew from Miami, Florida to Newark, New Jersey.

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3. On or about March 12, 1970, the defendant RAUL ORTEGA-ALVAREZ registered and stayed in the Saxony Motel, 330 Atlantic Avenue, Elizabeth, New Jersey.

4. On or about March 12, 1970, the defendant RAUL ORTEGA-ALVAREZ and co-conspirator Ramiro Gonzalez met with the defendants CIRO RODRIGUEZ-CALANA and FRANCISCA ORTEGA-RODRIGUEZ at 38 Rankin Street, Elizabeth, New Jersey.

5. On or about March 12, 1970, the defendants JORGE INFUESTA and LUIS REYES-PADRON received approximately one kilogram of heroin from the defendant RAUL ORTEGA-ALVAREZ in an apartment at 666 W. 162nd Street, New York, New York.

6. On or about March 13, 1970, defendant JOAQUIN R. PRADA and co-conspirators Ramiro Gonzalez and Miguel Rodriguez delivered approximately one kilogram of heroin at the C.B.C. Gas Station, 2120 Amsterdam Avenue, New York, New York.

7. On or about March 13, 1970, the defendants RAUL ORTEGA-ALVAREZ, JORGE INFUESTA and LUIS REYES-PADRON met in an apartment at 666 W. 162nd Street, New York, New York.

8. On or about March 16, 1970, the defendant RAUL ORTEGA-ALVAREZ entered Luigi's Restaurant & Bar, 41 Broadway, New York, New York.

9. On or about March 31, 1970, the defendant CARLOS TAPANES delivered approximately one kilogram of heroin in the parking lot of the Hicksville Diner, Old Country Road and South Oyster Bay Road, Hicksville, Long Island.

10. In or about March, 1970, the defendant RAUL ORTEGA-ALVAREZ delivered approximately one kilogram of heroin to the defendant LUIS REYES-PADRON at 38 Rankin Street, Elizabeth, New Jersey.

11. In or about March or April, 1970, the defendant RAUL ORTEGA-ALVAREZ delivered approximately two kilograms of heroin to the defendants JORGE INFUESTA and LUIS REYES-PADRON in an apartment at 666 W. 162nd Street, New York, New York.

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12. In or about March, 1970, co-conspirators Ramiro Gonzalez and Miguel Rodriguez met with the defendants FRANCISCO ORLANDO PEREZ and ORLANDO GIL.

13. On or about March 24, 1970, the defendants FRANCISCO ORLANDO PEREZ and ORLANDO GIL met at 572 W. 173rd Street, New York, New York.

14. On or about March 24, 1970 the defendant FRANCISCO ORLANDO PEREZ went to the Blue Mirror Bar, 3347 Broadway, New York, New York.

15. In or about March or April, 1970, the defendant HECTOR ECHEVARRIA received approximately 1/2 kilogram of heroin at 380 Audubon Avenue, New York, New York.

16. In or about March or April, 1970, co-conspirators Ramiro Gonzalez and Miguel Rodriguez had a conversation with the defendant CHARLES BUSIGO-CIFRE in the vicinity of the C.B.C. Gas Station, 2120 Amsterdam Avenue, New York, New York.

17. In or about March or April 1970, co-conspirators Ramiro Gonzalez and Miguel Rodriguez delivered approximately 1/2 kilogram of heroin for the defendant CHARLES BUSIGO-CIFRE to John Doe in the vicinity of the C.B.C. Gas Station 2120 Amsterdam Avenue, New York, New York.

18. In or about March or April, 1970, the defendant JOAQUIN R. PRADA received a sum of cash from the defendant CHARLES BUSIGO-CIFRE.

19. In or about March or April, 1970, the defendants CHARLES BUSIGO-CIFRE and HECTOR ECHEVARRIA met at 380 Audubon Avenue, New York, New York.

20. In or about March or April, 1970, co-conspirator Ramiro Gonzalez met with the defendant DOMINGO DEL CRISTO at the Gallo de Maron bar, 3922 Broadway, New York, New York.

21. In or about March or April, 1970, the defendants ARMANDO GARCIA-ALVAREZ and JOHN DOE, a/k/a "Hugo El Americano" met at a bar in the Alamac Hotel, A & B Bar and Lounge, 2056 Broadway, New York, New York.

SH:mc1
d-45

22. In or about March or April, 1970, the defendant ARMANDO GARCIA-ALVAREZ met with co-conspirator Ramiro Gonzalez in Miami, Florida.

23. In or about March or April, 1970, the defendant JOHN DOE, a/k/a "Hugo El Americano" received approximately two kilograms of heroin in an apartment at 804 W. 180th Street, New York, New York.

24. In or about March or April, 1970, the defendant PAUL ORTEGA-ALVAREZ and co-conspirators Ramiro Gonzalez and Miguel Rodriguez delivered one kilogram of heroin to the defendant ARMANDO GARCIA-ALVAREZ in the vicinity of 158th Street and Broadway, New York, New York.

25. In or about March or April, 1970, the defendants JOSE LUIS SARRIA and JOHN DOE, a/k/a "Roberto" received approximately 1 1/2 kilograms of heroin in Hudson County, New Jersey.

26. In or about March or April, 1970, co-conspirator Ramiro Gonzalez met with the defendant JOSE OTERO at the Gallo de Maron bar, 3922 Broadway, New York, New York.

27. In or about March, of April, 1970, the defendant JOSE OTERO received approximately one kilogram of heroin in the vicinity of the Cuba Bar, 1475 St. Nicholas Avenue, New York, New York.

28. In or about March or April, 1970, co-conspirators Ramiro Gonzalez and Miguel Rodriguez met with the defendant CIRILLO FIGUEROA at the 005 Bar, 3865 Broadway, New York, New York.

29. In or about March or April, 1970, co-conspirator Ramiro Gonzalez delivered approximately one kilogram of heroin for the defendant CIRILLO FIGUEROA to John Doe in an apartment at 804 W. 180th Street, New York, New York.

30. In or about March or April, 1970, co-conspirator Miguel Rodriguez delivered approximately one kilogram of heroin for the defendant CIRILLO FIGUEROA to the defendant RIGOBERTO ROSAL-RODRIGUEZ at the C.B.C. Gas Station, 2120 Amsterdam Avenue, New York, New York.

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31. In or about March or April, 1970, the defendant CARLOS TAPANES delivered one kilogram of heroin to the defendant CIRILLO FIGUEROA in the vicinity of 145th Street and Broadway, New York, New York.

32. In or about March or April, 1970, the defendant JOAQUIN R. PRADA handed 1 1/2 kilograms of heroin to the defendant CIRILLO FIGUEROA in an apartment at 790 Riverside Drive, New York, New York.

33. In or about March or April, 1970, the defendant JOSE RAMIREZ-RIOS received approximately 1/2 kilogram of heroin at the El Bayames Restaurant, 1279 St. Nicholas Avenue, New York, New York.

34. In or about March or April, 1970, the defendant JOHN DOE, a/k/a Roberto Lopez, received approximately 1/2 kilogram of heroin at the Gallo de Maron bar, 3924 Broadway, New York, New York.

35. In or about March or April, 1970, the defendant JOSE ANGEL AGUILARA transported 1/2 kilogram of heroin from Elizabeth, New Jersey, to New York, New York.

(Title 21, United States Code, Sections 173 and 174 and Title 26, United States Code, Sections 4701, 4703, 4704(a), 4771(a) and 7237(a).)

COUNT TWO

The Grand Jury further charges:

On or about March 12, 1970, in the Southern District of New York, RAUL ORTEGA-ALVAREZ, a/k/a Raul Ortega, and CIRO RODRIGUEZ-CALANA, a/k/a Ciro A. Calana, a/k/a Ciro Rodriguez, the defendants, unlawfully, wilfully and knowingly did receive, conceal, buy, sell and facilitate the transportation, concealment and sale of a narcotic drug, to wit, approximately twenty kilograms of heroin, after the said narcotic drug had been imported and brought into the United States contrary to law, knowing that the said narcotic drug had theretofore been imported and brought into the United States contrary to law in that the importation and bringing of any narcotic

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M-14


drug into the United States, except such amounts of crude opium and coca leaves as the Director of the Bureau of Narcotics and Dangerous Drugs finds to be necessary to provide for medical and legitimate uses only, is prohibited.

(Title 21, United States Code, Sections 173 and 174 and Title 18, United States Code, Section 2.)

COUNT THREE

The Grand Jury further charges:

In or about the month of March, 1970, in the Southern District of New York, RAUL ORTEGA-ALVAREZ, LUIS REYES-PADRON, a/k/a "Luis Reyes", and JORGE INFUESTA, a/k/a "Hueso", a/k/a "George", the defendants, unlawfully, wilfully and knowingly did receive, conceal, buy, sell and facilitate the transportation, concealment and sale of a narcotic drug, to wit, approximately one kilogram of heroin, after the said narcotic drug had been imported and brought into the United States contrary to law, knowing that the said narcotic drug had theretofore been imported and brought into the United States contrary to law in that the importation and bringing of any narcotic drug into the United States, except such amounts of crude opium and coca leaves as the Director of the Bureau of Narcotics and Dangerous Drugs finds to be necessary to provide for medical and legitimate uses only, is prohibited.



(Title 21, United States Code, Sections 173 and 174 and Title 18, United States Code, Section 2.)

COUNT FOUR

The Grand Jury further charges:

In or about the month of March or April, 1970, in the Southern District of New York, HECTOR ECHEVARRIA, a/k/a Liborio Morales, a/k/a Hector Arnold Echevarria-Rios, the defendant, unlawfully, wilfully and knowingly did receive, conceal, buy, sell and facilitate the transportation, concealment and sale of a narcotic drug, to wit, approximately 1/2 kilogram of heroin, after the said narcotic drug had been imported and brought into the United States contrary

SN:19
M-14

to law, knowing that the said narcotic drug had theretofore been imported and brought into the United States contrary to law in that the importation and bringing of any narcotic drug into the United States, except such amounts of crude opium and coca leaves as the Director of the Bureau of Narcotics and Dangerous Drugs finds to be necessary to provide for medical and legitimate uses only, is prohibited.

(Title 21, United States Code, Sections 173 and 174 and Title 18, United States Code, Section 2.)

COUNT FIVE

The Grand Jury further charges:

In or about the months of March and April, 1970, in the Southern District of New York, CHARLES BUSIGO-CIFRE, a/k/a Charley Cifre, a/k/a Charley Busigo, a/k/a Cifire, the defendant, unlawfully, wilfully and knowingly did receive, conceal, buy, sell and facilitate the transportation, concealment and sale of a narcotic drug, to wit, approximately one kilogram of heroin, after the said narcotic drug had been imported and brought into the United States contrary to law, knowing that the said narcotic drug had theretofore been imported and brought into the United States contrary to law in that the importation and bringing of any narcotic drug into the United States, except such amounts of crude opium and coca leaves as the Director of the Bureau of Narcotics and Dangerous Drugs finds to be necessary to provide for medical and legitimate uses only, is prohibited.

(Title 21, United States Code, Sections 173 and 174 and Title 18, United States Code, Section 2.)

COUNT SIX

The Grand Jury further charges:

In or about the months of March and April, 1970, in the Southern District of New York, DOMINGO DEL CRISTO, the defendant, unlawfully, wilfully and knowingly did receive, conceal, buy, sell and facilitate the transportation, concealment and sale of a narcotic drug, to wit, approximately

SN:17
H-14

one kilogram of heroin, after the said narcotic drug had been imported and brought into the United States contrary to law, knowing that the said narcotic drug had theretofore been imported and brought into the United States contrary to law in that the importation and bringing of any narcotic drug into the United States, except such amounts of crude opium and coca leaves as the Director of the Bureau of Narcotics and Dangerous Drugs finds to be necessary to provide for medical and legitimate uses only, is prohibited.

(Title 21, United States Code, Sections 173 and 174 and Title 18, United States Code, Section 2.)

COUNT SEVEN

The Grand Jury further charges:

In or about the month of March, 1970, in the Southern District of New York, FRANCISCO ORLANDO PEREZ, a/k/a Francisco Perez, a/k/a "Paco", a/k/a "Jose", and ORLANDO GIL, a/k/a Joaquin Gil, a/k/a Orlando Joaquin Gil, a/k/a Joaquin Orlando Gil y Montero, a/k/a Luis Francisco Gil, the defendants, unlawfully, wilfully and knowingly did receive, conceal, buy, sell and facilitate the transportation, concealment and sale of a narcotic drug, to wit, approximately 1/4 kilogram of heroin, after the said narcotic drug had been imported and brought into the United States contrary to law, knowing that the said narcotic drug had theretofore been imported and brought into the United States contrary to law in that the importation and bringing of any narcotic drug into the United States, except such amounts of crude opium and coca leaves as the Director of the Bureau of Narcotics and Dangerous Drugs finds to be necessary to provide for medical and legitimate uses only, is prohibited.

(Title 21, United States Code, Sections 173 and 174 and Title 18, United States Code, Section 2.)

SN:19
N-14

COUNT EIGHT

The Grand Jury further charges:

In or about the months of March and April, 1970, in the Southern District of New York, ARMANDO GARCIA-ALVAREZ, a/k/a Armando Alvarez, a/k/a Armando Garcia, a/k/a Andres Alvarez, a/k/a Joaquin Gonzalez, a/k/a "El Chino", the defendant, unlawfully, wilfully and knowingly did receive, conceal, buy, sell and facilitate the transportation, concealment and sale of a narcotic drug, to wit, approximately six kilograms of heroin, after the said narcotic drug had been imported and brought into the United States contrary to law, knowing that the said narcotic drug had theretofore been imported and brought into the United States contrary to law in that the importation and bringing of any narcotic drug into the United States, except such amounts of crude opium and coca leaves as the Director of the Bureau of Narcotics and Dangerous Drugs finds to be necessary to provide for medical and legitimate uses only, is prohibited.

(Title 21, United States Code, Sections 173 and 174 and Title 18, United States Code, Section 2.)

COUNT NINE

The Grand Jury further charges:

In or about the months of March and April, 1970, in the Southern District of New York, JOHN DOE, a/k/a "Hugo El Americano", a/k/a Hugo Contero Viera, a/k/a Hugo Viera, the defendant, unlawfully, wilfully and knowingly did receive, conceal, buy, sell and facilitate the transportation, concealment and sale of a narcotic drug, to wit, approximately four kilograms of heroin, after the said narcotic drug had been imported and brought into the United States contrary to law, knowing that the said narcotic drug had theretofore been imported and brought into the United States contrary to law in that the importation and bringing of any narcotic drug into the United States, except such amounts of crude opium and coca leaves as the Director

SN:19
N-14

of the Bureau of Narcotics and Dangerous Drugs finds to be necessary to provide for medical and legitimate uses only, is prohibited.

(Title 21, United States Code, Sections 173 and 174 and Title 18, United States Code, Section 2.)

COUNT TEN

The Grand Jury further charges:

In or about the months of March and April, 1970, in the Southern District of New York, JOSE LUIS SARRIA, a/k/a "Pepito", a/k/a "Pepe", the defendant, unlawfully, wilfully and knowingly did receive, conceal, buy, sell and facilitate the transportation, concealment and sale of a narcotic drug, to wit, approximately two and one-half kilograms of heroin, after the said narcotic drug had been imported and brought into the United States contrary to law, knowing that the said narcotic drug had theretofore been imported and brought into the United States contrary to law in that the importation and bringing of any narcotic drug into the United States, except such amounts of crude opium and coca leaves as the Director of the Bureau of Narcotics and Dangerous Drugs finds to be necessary to provide for medical and legitimate uses only, is prohibited.

(Title 21, United States Code, Sections 173 and 174 and Title 18, United States Code, Section 2.)

COUNT ELEVEN

The Grand Jury further charges:

In or about the months of March and April, 1970, in the Southern District of New York, CIRILLO FIGUEROA, a/k/a "Lazarito", a/k/a "Lazaro", a/k/a "El Guajiro", the defendant, unlawfully, wilfully and knowingly did receive, conceal, buy, sell and facilitate the transportation, concealment and sale of a narcotic drug, to wit, approximately six and one-half kilograms of heroin, after the said narcotic drug had been imported and brought into the United States contrary to law, knowing that the said narcotic drug had

SW:19
N-14

theretofore been imported and brought into the United States contrary to law in that the importation and bringing of any narcotic drug into the United States, except such amounts of crude opium and coca leaves as the Director of the Bureau of Narcotics and Dangerous Drugs finds to be necessary to provide for medical and legitimate uses only, is prohibited.

(Title 21, United States Code, Sections 173 and 174 and Title 18, United States Code, Section 2.)

COUNT TWELVE

The Grand Jury further charges:

In or about the month of March or April, 1970, in the Southern District of New York, JOAQUIN R. PRADA, a/k/a "El Gallego", a/k/a "El Gãrdego", the defendant, unlawfully, wilfully and knowingly did receive, conceal, buy, sell and facilitate the transportation, concealment and sale of a narcotic drug, to wit, approximately one and one-half kilograms of heroin, after the said narcotic drug had been imported and brought into the United States contrary to law, knowing that the said narcotic drug had theretofore been imported and brought into the United States contrary to law in that the importation and bringing of any narcotic drug into the United States, except such amounts of crude opium and coca leaves as the Director of the Bureau of Narcotics and Dangerous Drugs finds to be necessary to provide for medical and legitimate uses only, is prohibited.

(Title 21, United States Code, Sections 173 and 174 and Title 18, United States Code, Section 2.)

COUNT THIRTEEN

The Grand Jury further charges:

In or about the month of March or April, 1970, in the Southern District of New York, RIGOBERTO ROSAL-RODRIGUEZ, a/k/a "Blanco Serra", a/k/a "Blanquito Serra",

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H-14

a/k/a "Rigo", a/k/a "Rigo Rosal", a/k/a "Roberto", the defendant, unlawfully, wilfully and knowingly did receive, conceal, buy, sell and facilitate the transportation, concealment and sale of a narcotic drug, to wit, approximately one kilogram of heroin, after the said narcotic drug had been imported and brought into the United States contrary to law, knowing that the said narcotic drug had theretofore been imported and brought into the United States contrary to law in that the importation and bringing of any narcotic drug into the United States, except such amounts of crude opium and coca leaves as the Director of the Bureau of Narcotics and Dangerous Drugs finds to be necessary to provide for medical and legitimate uses only, is prohibited.

(Title 21, United States Code, Sections 173 and 174 and Title 18, United States Code, Section 2.)

COUNT FOURTEEN

The Grand Jury further charges:

In or about the month of March or April, 1970, in the Southern District of New York, JOSE OTERO, a/k/a "Pepe", the defendant, unlawfully, wilfully and knowingly did receive, conceal, buy, sell and facilitate the transportation, concealment and sale of a narcotic drug, to wit, approximately one kilogram of heroin, after the said narcotic drug had been imported and brought into the United States contrary to law, knowing that the said narcotic drug had theretofore been imported and brought into the United States contrary to law in that the importation and bringing of any narcotic drug into the United States, except such amounts of crude opium and coca leaves as the Director of the Bureau of Narcotics and Dangerous Drugs finds to be necessary to provide for medical and legitimate uses only, is prohibited.

(Title 21, United States Code, Sections 173 and 174 and Title 18, United States Code, Section 2.)

ME:19
H-14

COUNT FIFTEEN

The Grand Jury further charges:

In or about the month of March or April, 1970, in the Southern District of New York, JOSE RAMIREZ-RAMOS, a/k/a Jose Ramirez, a/k/a "Chevas", the defendant, unlawfully, wilfully and knowingly did receive, conceal, buy, sell and facilitate the transportation, concealment and sale of a narcotic drug, to wit, approximately 1/2 kilogram of heroin, after the said narcotic drug had been imported and brought into the United States contrary to law, knowing that the said narcotic drug had theretofore been imported and brought into the United States contrary to law in that the importation and bringing of any narcotic drug into the United States, except such amounts of crude opium and coca leaves as the Director of the Bureau of Narcotics and Dangerous Drugs finds to be necessary to provide for medical and legitimate uses only, is prohibited.

(Title 21, United States Code, Sections 173 and 174 and Title 18, United States Code, Section 2.)

COUNT SIXTEEN

The Grand Jury further charges:

In or about the month of March or April, 1970, in the Southern District of New York, JOHN DOE, a/k/a Roberto Lopez, the defendant, unlawfully, wilfully and knowingly did receive, conceal, buy, sell and facilitate the transportation, concealment and sale of a narcotic drug, to wit, approximately 1/2 kilogram of heroin, after the said narcotic drug had been imported and brought into the United States contrary to law, knowing that the said narcotic drug had theretofore been imported and brought into the United States contrary to law in that the importation and bringing of any narcotic drug into the United States, except such amounts of crude opium and coca leaves as the Director of the Bureau of Narcotics and Dangerous Drugs finds to be necessary to provide for medical and

SH:19
N-14

legitimate uses only, is prohibited.

(Title 21, United States Code, Sections 173 and 174
and Title 18, United States Code, Section 2.)

COUNT SEVENTEEN

The Grand Jury further charges:

In or about the month of March or April, 1970,
in the Southern District of New York, JOSE ANGEL AGUILERA,
a/k/a Jose Alberto Aguilera, a/k/a "El Moro", a/k/a "Mauro",
a/k/a "Moscoso", the defendant, unlawfully, wilfully and
knowingly did receive, conceal, buy, sell and facilitate
the transportation, concealment and sale of a narcotic
drug, to wit, approximately 1/2 kilogram of heroin, after
the said narcotic drug had been imported and brought into
the United States contrary to law, knowing that the said
narcotic drug had theretofore been imported and brought
into the United States contrary to law in that the importation
and bringing of any narcotic drug into the United States,
except such amounts of crude opium and coca leaves as
the Director of the Bureau of Narcotics and Dangerous
Drugs finds to be necessary to provide for medical and
legitimate uses only, is prohibited.

(Title 21, United States Code, Sections 173 and 174
and Title 18, United States Code, Section 2.)

/s/ Richard Edridge
FOREMAN

/s/ Paul J. Curran
PAUL J. CURRAN
United States Attorney

A TRUE COPY
RAYMOND F. BURGARDT, Clerk

By /s/ E. A. B...
Deputy Clerk

App. 17

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[69]

UNITED STATES OF AMERICA,

NOTICE OF MOTION

S 73 Cr.

(TPG)

-against-

LUIS ORTEGA, et al.,

Defendants.

S I R S :

PLEASE TAKE NOTICE, that upon the annexed affidavit of HARVEY J. MICHELMAN, duly sworn to the 30th day of October, 1973, upon the indictments and upon all other papers and proceedings heretofore had herein, the defendant, LUIS ORTEGA, will move this Court on November 2, 1973, in Room 2703 of the United States Courthouse, Foley Square, City, County and State of New York, at 2:00 P.M. in the afternoon of that day for the following orders:

- (a) Severing the trial of the defendant Ortega from the trial of the other defendants;
- (b) Dismissing the indictment with prejudice upon the following grounds:
 - 1. Double jeopardy;
 - 2. Collateral estoppel;
 - 3. Selective prosecution; or in the alternative
- (c) Ordering hearings with respect to the defendant's claims of (a) double jeopardy; (b) collateral estoppel; and (c) selective prosecution; and
- (d) together with such other and further relief as the Court may deem just and proper.

Yours, etc.

HARVEY J. MICHELMAN
MICHELMAN & MICHELMAN
Attorney for Defendant
250 West 57th Street
New York, New York 10019

TO: HONORABLE PAUL J. CURRAN
UNITED STATES ATTORNEY
Foley Square
New York, New York

ONLY COPY AVAILABLE

W. Cullen MacDonald, Asst. U. S. Attorney

alleged violations of law and then the government will urge upon the Jury that Mr. Ortega, who is named as a co-conspirator but not a co-defendant, was the "ring leader of the remaining defendants." So the government is trying to do indirectly that which it is prevented from doing directly, to wit: to try the defendant, Ortega, on a set of facts which has been previously adjudicated in the 1971 indictment upon which the defendant has heretofore been found guilty and is presently serving a term of imprisonment.

7. The defendant, Ortega, will interpose legal defenses against the government's prosecution of him for violation of the "head of organized crime statute." While, upon information and belief the other defendants will be making factual defenses with respect to the conspiracy and substantive drug offenses, the defendant, Ortega, will be making legal defenses of collateral estoppel, double jeopardy and selective prosecution and it is the defendant, Ortega's announced intention to request a trial with a Judge alone and without a Jury since legal defenses fall solely within a Judge's province.

8. Further, it must be considered that in terms of the unitary trial of the defendant, Ortega, in a joint trial with those co-defendants not previously tried on the conspiracy and/or substantive counts, the degree of prejudice resulting from such joint trial would not only be the denial of a fair trial for the defendant, Ortega, but would lead to such confusion as to negate a fair trial for any of the defendants.

9. Primarily where the defendant, Ortega, is concerned, the jury on the trial would be compelled to evaluate two standards of proof as was recognized in the case of USA v. Krontz Creamery, Inc., 252 F. Supp. 312 (USDC Md., 1964):

"...it must be remembered that in a unitary trial a Jury would be asked to:

(a) Recognize that the burden upon the defendants in the double jeopardy aspect would be only that of proof by a preponderance of the evidence, while the burden on the Government on the question of guilt would be proof beyond a reasonable doubt.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[70]

UNITED STATES OF AMERICA,

AFFIDAVIT

LUIS ORTEGA, et. al.,

S 75 Cr. (TPG)

Defendants.

HARVEY J. MICHELMAN, being duly sworn, deposes and says:

1. That I am the attorney for Luis Ortega, the defendant herein and make this Affidavit in support of the instant motions for (a) a trial severance and (b) dismissing the indictment upon the grounds of double jeopardy, collateral estoppel and selective prosecution, which motions, if not granted on the papers herein would require an evidentiary hearing before they could in any manner be resolved in favor of the government.

MOTION FOR SEVERANCE

2. The motion for a severance granting the defendant, Ortega, a trial separate from the other defendants indicted in the newest superseding indictment should be granted because the joint trial of Mr. Ortega with the other defendants will irreparably damage Ortega's constitutional right to a fair trial. Essentially, Rule 14 FRCP provides:

"If it appears that a defendant...is prejudiced by a joinder of offenses or of defendants...whether by a multiplicity of counts or of defendants or otherwise, the Court...may dismiss an indictment or intervention of one or more counts thereof, should an election of counts grant a severance of defendants, and provide whatever other relief is required..."

3. The defendant was indicted and tried under Indictment No. 71 Cr. 1103 which charged Luis Ortega, George Warren Perez, Jean Craini and others with a conspiracy to violate Sections 812, 831(a)(1), 831(b)(1)(a), 932, 957, 960(a)(1) and 960(b)(1) of Title 21 USC. Ortega was subsequently convicted and sentenced to a term of imprisonment of twenty-five years. Thereafter the defendant, Ortega, was

indicted together with Jean Orsini and others including George Warren Perez who was named as a co-conspirator but not a co-defendant for conspiracy to violate Sections 173, 174, 812, 841(a)(1), 841(b)(1)(a), 951(a)(1) and 952 of Title 21 USC as well as for the substantive violations of Title 21 Sections 173, 174; Title 21 USC 812(a)(1), 841(b)(1)(a) as well as 21 USC Section 812(a)(1) and 841(b)(1)(a).

4. It was not until after the defendant, Ortega, had moved for a dismissal upon the grounds of double jeopardy that the United States Attorney went back to the Grand Jury and requested and obtained superceding indictment No. 1 which charged Ortega and Jean Orsini as defendants and George Warren Perez as a co-conspirator but not a co-defendant in a conspiracy count (Violation 21 USC Sections 173, 174, 846 and 953) as well as substantive counts for violations of Title 21 Sections 173, 174 and Title 21 Sections 812(a)(1), 841(b)(1)(a) as well as two substantive counts charging Title 21 Sections 812(a)(1) and 841(b)(1)(a). To superceding indictment No. 1 was added the count of violation of Title 21 USC Section 841 charging the defendant, Ortega, with being the head of an organized criminal.

5. Again superceding indictment No. 1 was challenged on double jeopardy grounds and the United States Attorney in a last desperate effort returned to the Grand Jury and obtained superceding indictment No. 2 which is presently pending before this Court.

6. In this second superceding indictment the defendant, Ortega, was dropped from the conspiracy and substantive drug counts and charged solely with a violation of the "head of organized crime statute." Thus, from the indictment it appears that the government has conceded that it can no longer try Ortega on the conspiracy and substantive drug possession counts because the defense of double jeopardy is valid as a matter of law. Now it is the government's position that it will throw Mr. Ortega together with the other remaining defendants and offer testimony with respect to the other defendant's

(b) Realize that for the double jeopardy aspect, the defendants would have to prove that what they are charged with in this case was the same as, or part of the same, conspiracy to which they had previously pleaded nolo contendere and for which they had been fined; but if the jury did find that the presently charged conspiracy was different from the previous case, they are not to convict because of previous guilt, even although the moving defendants have just tried, unsuccessfully, to say "Guilty before, guilty now, but you can't hold us because they are the same crime."

To require the defendants, before the same jury, to urge their guilt as constituting double jeopardy, and so a defense; but if unsuccessful, to face the jury with a "We were wrong; we said we were guilty; now we say we are not; would seriously impair, if not completely destroy the value of a double jeopardy defense in a case such as this."

10. The Court went on to say that it would be "unfair" to subject the defendant to the risks of such involvement. Ortega is not charged in the conspiracy but he would be most certainly prejudiced by being tried jointly with other persons who will make factual defenses with respect to those charges.

"For this reason the court has indicated its strong inclination to grant a separate, and prior, trial to them, if the motions to hear the double jeopardy issues, non-jury, and before the trial of the general issue, were to be denied."

For the reasons above set forth, the court grants the motions of the moving defendants for a separate hearing of the issues raised by the double jeopardy motions, before the court without a jury, prior to the trial of the general issue." *Idem*, supra P322.

11. It is obvious from the government's tactics that rather than seeking justice it will prejudicially endeavour to try Ortega together with the other co-defendants named in separate counts solely as a means to get a verdict of guilty by association and confusion rather than the constitutionally mandated rule of a fair trial for each of the defendants. The Court may not oversight the reality of the consequences of the defendant, Ortega's legal defenses and their prejudicial effect upon the jury which is to consider the guilt or innocence of the co-defendant on factual defenses.

DOUBLE JEOPARDY

12. To begin with, I wish to incorporate by reference all materials previously submitted on behalf of the defendant, Ortega, with respect to the issue of double jeopardy and have them applied to the charges presently pending against Ortega herein, to wit: violation of Title 21 Section 843.

13. It is respectfully submitted that the evidence which was proffered by the prosecution in the trial of the 1971 indictment which amounted to some 10 days of actual Courtroom work will be reintroduced against the defendant solely to increase his sentence which, under said statute, can be extended to a term of life imprisonment.

14. It is respectfully submitted that the government was required at the time it brought Mr. Ortega to trial on the 1971 indictment to have presented all proof available to it at the time so that the defendant could not be harassed and made the subject of multiple prosecutions where the government could return to Court again and again until it secured a sentence of its choosing. In the case of People v. Nelson, 32 Ill.2d, 390, 207 N.E.2d 60, cert. den. 304 U.S. 1023,

65 S.Ct. 1951 the Court holds:

"No purpose was served nor could be served by the second trial except an imposition of a greater penalty...To determine, as a matter of legal semantics, that two indictable offenses were committed does not make these multiple trials fair or weigh the fact that defendants were guilty of only one punishable course of conduct.

In this case it is apparent that the State wishes to substitute its opinion of the adequacy of punishment for defendant's misconduct for that of the original jury. Its feel that fundamental fairness to the accused cannot permit a second trial in this case." The model penal code Section 1.03 (Tent. draft II, 5) 1953. In dealing with the problem in general stated: "Requirement of single prosecution...If a person is charged with two or more offenses and the charges are unknown to the proper officer of the police or prosecution and within the jurisdiction of a single Court, they must be prosecuted in a single prosecution when: (a) the offenses are based on the same conduct; or (b) the offenses were based on a series of acts or omissions motivated by a purpose to accomplish a

Paragraph

single criminal objective, and necessary or incidental to the accomplishment of the objective; or (c) the offenses were based on a series of acts or omissions motivated by a common purpose or plan and which result in the repeated commission of the same offense or affect the same person or the same persons or the property thereof."

15. There is no question but that the government will introduce identical evidence to that which was used to convict the defendant, Ortega, on the 1971 indictment in an effort to prove that he violated Title 21 Section 848. The government knew or by the exercise of reasonable diligence could have ascertained that it would act to prosecute this defendant under Title 21 Section 848 when it sought conviction under the 1971 indictment. Essentially, Title 21 Section 848 is a statute which enhances sentencing rather than a substantive charge which could be proved by itself without proof that the defendant participated in a commission of other crimes. Since the defendant has been tried and convicted of the commission of crimes which form the basis of the government's alleged proof that Ortega was a "head of organized crime" a trial of this issue will surely be a nullification which is repugnant to our sense of fair justice and constitutionally barred by reason of double jeopardy.

16. To substantiate the defendant's claim that the government had available to it at the time 71 Cr. 1105 was prosecuted all of the alleged facts which it intends to introduce at the trial of this action I would respectfully cite this Court to the minutes of October 6, 1971 wherein the defendant, Ortega, by counsel, made a bail application for the reduction of bond and the then prosecuting attorney in a five page recitation gave emphasis to the fact that it claimed to know Mr. Ortega's life history better than anyone because, according to Mr. Walker, "he has been under investigation by the Bureau of Narcotics and Dangerous Drugs for the last four years, and based upon investigations by that bureau and based upon the reliable information of five different informants, these investigations have revealed that he is the head of one of the largest narcotic import and distribution networks in the country."

has international connections in Spain and France and, in fact, his organization orders of shipments kites every four to six weeks, a personal profit to this defendant of up to \$400,000 per shipment, money which finds its way into Swiss banks. In addition, he has been dealing in narcotics off and on from the time that he entered the country until 1965, and since 1965 he has been making his business in importing and processing narcotics very seriously, indeed." [Record page 11, emphasis supplied] Annexed hereto and used a part hereof are pages nine through fourteen of the transcript of the hearing before Honorable Lawrence U. Pierce, D.J.

17. In Patton v. State of N.C., 361 F.2d 635, 643 (C.A.N.C. 1967) the Court stated:

"Double jeopardy, rather than being a single doctrine is actually comprised of three separate though related rules prohibiting (1) re prosecution for the same offense following acquittal, (2) re prosecution for the same offense following conviction, and (3) multiple punishment for the same offense.

18. Surely the trial of Ortega on an alleged violation of Title 21 USC 842 represents nothing more than a re prosecution for the same offense charged in the 1971 indictment following conviction and a multiple punishment for the same offense. As Mr. Justice Brennan stated in Abbott v. United States, 359 U.S. 107, 199, 79 S.Ct. 655, 1973:

"...The basis of the Fifth Amendment protection against double jeopardy is that a person shall not be harassed by successive trials; that an accused shall not have to marshal the resources and energies necessary to his defense more than once for the same alleged criminal offense."

COLLATERAL ESTOPPEL

19. While the doctrine of collateral estoppel was previously held to be a civil remedy in Asha v. Swenson, 397 US 435, 90 S.Ct. 1103, it was held that collateral estoppel in criminal trials was a valid defense.

20. Reaffirming Asha the Supreme Court held in Harris v. Washington, 404 U.S. 55, 92 S.Ct. 103;

"...Collateral Estoppel is an integral part of the protection against double jeopardy guaranteed by the Fifth and Fourteenth Amendments. (See Bartlett v. Maryland, 335 U.S. 761, 69 S.Ct. 2053, 25 L.Ed.2d 707.) It said that collateral estoppel 'means simply that when an issue of ultimate fact has been determined by a valid and final judgment that issue cannot again be litigated between the parties in any future lawsuit.' 337 U.S., at 443, 69 S.Ct., at 1194."

21. It is respectfully submitted that the government will rely on the record in the trial of Indictment 71 Cr. 1105 to establish the underlying facts necessary to secure a conviction in the present indictment. The issues having been previously litigated the government is therefore estopped from reintroducing the same and the prosecution should be barred as a matter of law.

SELECTIVE PROSECUTION

22. Upon information and belief the defendant, Ortega, was singled out for prosecution under Title 21 Section 843 solely to harass and intimidate him in the hope that he would become a government informant. This is but one instance in a pattern of harassment which is a disgrace in the annals of cruel and inhuman punishment. Since the defendant was sentenced under 71 Cr. 1105 he has been subjected to a pattern of governmental acts calculated and intended to "crack" him.

23. Among these acts are his unauthorized removal from Lewisburg Penitentiary on excursions to West Street and The Orange County Jail; his solitary confinement without any charges being made against him; the constant threats by prosecutorial authorities of 'five other indictments' if he doesn't co-operate; his being indicted under a statute which has heretofore been used only three times, and, finally the instant indictment which is the second superceding indictment whereby the defendant's exposure has been consistently reduced from five counts to three counts to one count.

24. In the case of U.S. v. Steel, 451 F2d 1140, (6th Circuit 1972) the Court held that evidence should be heard to elicit a fair determination as to whether in fact the defendant was a victim of selective prosecution at the hands of the government.

25. At very least the Court should order a hearing with respect to this claim of selective prosecution so that evidence may be offered to substantiate defendant's claims as set forth above and any other facts which would enlighten the Court as to the government's vicious campaign to intimidate the defendant into becoming an informer under the guise of trying the defendant for an alleged violation of law.

26. By reason of all of the foregoing it is respectfully requested that the Court grant to the defendant, Luis Ortega, the following relief:

- (A) Severance of the trial of Ortega from all of the defendants in this matter;
- (B) Dismissal of the indictment with prejudice against the government on the grounds:
 - (1) Double jeopardy;
 - (2) Collateral estoppel; and
 - (3) Selective prosecution or in the alternative grant a hearing with respect to double jeopardy, collateral estoppel and selective prosecution;
- (C) Together with such other and further relief as to the Court may seem just and proper under the circumstances.

HARVEY J. MICHELMAN

Shown to before me this
30th day of October, 1973.

Notary Public

STANLEY L. GILLESPIE
Notary Public, State of New York
No. 41756784U
Qualified in Queens County
Commission Expires March 30, 1974

App. 27

Judgment and Commitment 53
United States District Court

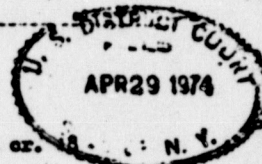
SOUTHERN DISTRICT OF NEW YORK

United States of America

Raul Ortega Alvarez

No.

74 cr.



On this 29th day of April, 1974 came the attorney for the government and the defendant appeared in person and Harvey J. Michelman Esq. (interpreter Mrs Norma Saltzer)

It is ADJUDGED that the defendant upon his plea of not guilty and a verdict of guilty by a jury has been convicted of the offense of unlawfully, wilfully and knowingly did receive, conceal, buy, sell and facilitate the transportation, concealment and sale of heroin and a conspiracy so to do (Title 21, United States Code, Sections 173 and 174 and Title 18, United States Code Section 2.)

as charged in counts (1) (2) and (3) and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It is ADJUDGED that the defendant is guilty as charged and convicted.

It is ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of TWELVE (12) YEARS on each of counts (1) (2) and (3) to run concurrently with each other.

It is ADJUDGED that

MICROFILM
MAY 1 1974

It is ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

Charles W. McBurne
United States District Judge.

70 *Raymond J. Bergshtet*
Clerk.

"Insert 'by [name of counsel], counsel' or without counsel; the court advised the defendant of his rights to counsel and asked him whether he desired to have counsel appointed by the court, and the defendant thereupon stated that he waived the right to the assistance of counsel." Insert (1) "guilty and the court being satisfied there is a factual basis for the plea," (2) "not guilty, and a verdict of guilty," (3) "not guilty, and a finding of guilty," or (4) "nolo contendere," as the case may be. Insert "in count(s) number" if required. "Enter (1) sentence or sentences, specifying counts if any; (2) whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin with reference to termination of preceding term or to any other outstanding unserved sentence; (3) whether defendant is to be further imprisoned until payment of the fine or fine and costs, or until he is otherwise discharged as provided by law. Enter any order with respect to suspension and probation. For use of Court to recommend a particular institution.

App. 28

[53]

SOUTHERN DISTRICT OF NEW YORK

M.S. 17-65 PH 74
S.D. OF N.Y. *gsw*

UNITED STATES OF AMERICA,

Action No. 74 Cr 18

-against-

CMN

RAUL ORTEGA-ALVAREZ, et al.,

NOTICE OF APPEAL

TO

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Notice is hereby given that RAUL ORTEGA-ALVAREZ, above-named, hereby appeals to the United States Court of Appeals for the Second Circuit from the Judgment of Conviction of the Honorable Charles Metzner dated April 29, 1974 and from each and every part thereof.

SIGNED:

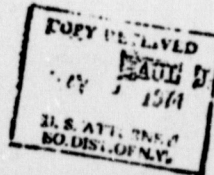
H. J. Michelman
HARVEY J. MICHELMAN

MICHELMAN & MICHELMAN
Attorneys for Appellant
250 West 57th Street
New York, New York

TO: HONORABLE PAUL J. CURRAN
UNITED STATES ATTORNEY
SOUTHERN DISTRICT OF NEW YORK
FOLEY SQUARE
NEW YORK, NEW YORK

DEFT.

*Federal House of Detention
427 West Street
New York, N.Y.*



CURRAN

App. 29

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

[41]

UNITED STATES OF AMERICA,)

Plaintiff,)

-vs-)

Case No. 71-281-CR-EC

RAUL ORTEGA-ALVAREZ,)

Defendant.)

- - - - -

U. S. Post Office Building,
300 N. E. 1st Street,
Miami, Florida
May 24, 1971

HEARING ON PLEA

Proceedings had and testimony taken in the
above-styled cause before the HONORABLE EMMETT C. CHOATE,
Senior Judge, U. S. District Court, Southern District
of Florida.

APPEARANCES:

HAROLD KEEFE, ESQUIRE,
Assistant U. S. Attorney,
14 N. E. 1st Avenue,
Miami, Florida

Attorney for Plaintiff,

MAX KOGEN, ESQUIRE,
1040 City National Bank Building,
25 W. Flagler,
Miami, Florida 33130

Attorney for Defendant.

1 WHEREUPON . . .

2 The following proceedings were had;

3 THE COURT: Are you ready to proceed?

4 MR. KEEFE: Your Honor, at this time I
5 would like to file an Information with the Court.

6 THE COURT: Have you seen this information?

7 MR. KOGEN: Yes, sir.

8 THE COURT: Has the Defendant?

9 MR. KOGEN: Your Honor, we need an
10 interpreter here. We have an interpreter here now.

11 THE COURT: Swear the interpreter.

12 WHEREUPON . . .

13 LINDA MAIESTRE

14 was duly sworn to translate from English into Spanish
15 to the Defendant all the proceedings, and to translate
16 from Spanish into English the statements of the Defendant.

17 THE COURT: Have you interpreted before?

18 THE INTERPRETER: Yes, sir.

19 THE COURT: How many cases?

20 THE INTERPRETER: I've lost track already.

21 THE COURT: Have you been successful?

22 THE INTERPRETER: I think so.

23 THE COURT: No complaint about your
24 failure?

25 THE INTERPRETER: I don't think so.

1 MR. KEEFE: Your Honor, I believe she has
2 translated in many cases before Judge Mehrtens.

3 MR. KOGEN: And acted in a case before
4 a visiting judge that took three and a half weeks, Judge,
5 and she was an interpreter at that time.

6 THE COURT: If she's gone through all
7 that stress and strain, I guess she's qualified. You
8 are telling me she is well qualified?

9 MR. KOGEN: Yes, sir.

10 MR. KEEFE: Yes, sir.

11 THE COURT: Ask the Defendant if he has
12 talked to her in Spanish, and if he believes that she
13 is well qualified to interpret Spanish into English,
14 and vice versa. Ask him that.

15 (Interpreter speaks to the Defendant in
16 Spanish.)

17 THE INTERPRETER: Yes, he understands
18 my Spanish perfectly well, sir.

19 THE COURT: Ask him if he agrees that you
20 are well qualified as an interpreter from Spanish to
21 English.

22 (Interpreter speaks to Defendant in
23 Spanish.)

24 THE INTERPRETER: Yes, he understands me
25 perfectly, sir.

1 THE COURT: Have you been kind enough to
2 read in Spanish a proposed Information, telling that
3 the District Attorney proposes to file in this case a
4 substitution of the indictment heretofore filed? Read
5 it to him in Spanish.

6 (Interpreter complies.)

7 MR. KOGEN: Your Honor, at this time ---

8 THE COURT: Do you understand Spanish?

9 MR. KOGEN: Very little. I understand
10 very little Spanish, but for the record, I would like
11 to indicate to the Court that I have discussed this
12 substitute Information with my client prior to his
13 appearing here, after I received it from the U. S.
14 Attorney's Office, and he understands what is contained
15 therein.

16 THE COURT: He understands what you are
17 attempting to do?

18 MR. KOGEN: Yes, sir.

19 THE COURT: Seeking to have the indictment
20 withdrawn?

21 MR. KOGEN: Yes, sir.

22 THE COURT: And the Information substi-
23 tuted?

24 MR. KOGEN: Yes, sir, he understands all
25 that, and there has been a complete discussion between

1 myself and him, through an interpreter.

2 THE COURT: Ask him if he understands
3 that the charge under the Information involves a manda-
4 tory sentence of not less than two years, and a sentence
5 may be as much as ten years.

6 MR. KOGEN: Yes, sir, subject to another
7 proviso, Judge.

8 MR. KEEFE: With the understanding that
9 the United States Government would recommend a sentence
10 of five years, under this count.

11 MR. KOGEN: Another proviso in addition
12 to that ---

13 MR. KEEFE: That he would also be sentenc-
14 ed under 420.882, which would allow him to be eligible
15 for parole.

16 THE COURT: Is this his first offense?

17 MR. KEEFE: Yes, Your Honor.

18 MR. KOGEN: Let's make sure. I'm not
19 sure. I think we had better ask him that.

20 THE DEFENDANT: (Through interpreter)

21 Yes, sir.

22 THE COURT: Ask him now if he understands,
23 Ms. Interpreter, what we are doing here; namely, destroy-
24 ing the indictment and substituting the Information.

25 THE DEFENDANT: (Through interpreter) Yes,

1 sir.

2 THE COURT: Is that agreeable and accept-
3 able to him?

4 THE DEFENDANT: (Through interpreter)
5 Yes, sir.

6 THE COURT: Does he realize the penalty
7 amounts to two to ten years?

8 THE DEFENDANT: (Through interpreter)
9 Yes, sir.

10 THE COURT: Would you be kind enough to
11 read the Information again to him, now?

12 (Interpreter complies.)

13 THE COURT: You may proceed with any
14 questions you have.

15 MR. KEEFE: Your Honor, we don't have
16 any questions.

17 THE COURT: You will later on?

18 MR. KEEFE: Yes, sir.

19 THE COURT: The Motion will be granted.

20 MR. KOGEN: I don't believe - have I
21 made a Motion? I haven't as yet, Your Honor, made a
22 Plea. I haven't made a Plea yet, Your Honor. At this
23 point, based on the questions and directions and
24 answers given by my client, at this time on behalf of
25 my client, I wish to change a plea from not guilty to.

1 the indictment as originally charged, and plead guilty
2 on behalf of my client, the Information filed herein
3 today.

4 THE COURT: The Information we have just
5 read to him?

6 MR. KOGEN: Yes, sir.

7 THE COURT: The Motion will be granted.
8 You may proceed.

9 MR. KEEFE: Thank you. Does he understand
10 that by pleading guilty he is waiving his right to trial
11 by jury?

12 THE DEFENDANT: (Through interpreter)
13 Yes, sir.

14 THE COURT: And his right to be confronted
15 by the witnesses?

16 THE DEFENDANT: (Through interpreter)
17 Yes, sir.

18 THE COURT: And to examine the witnesses
19 from the government, if he desires?

20 THE DEFENDANT: (Through interpreter)
21 Yes, sir.

22 THE COURT: And to produce witnesses on
23 his own behalf, if he desires?

24 THE DEFENDANT: (Through interpreter)
25 Yes, sir.

1 THE COURT: And to require each element
2 of the crime to be established beyond a reasonable doubt,
3 before he can be convicted?

4 THE DEFENDANT: (Through interpreter)
5 Yes, sir.

6 THE COURT: And that all these available
7 Constitutional Rights will be waived if he pleads guilty
8 to this Information?

9 THE DEFENDANT: (Through interpreter)
10 Yes, sir.

11 THE COURT: Ask him if anybody, particular-
12 ly anybody from the government, has urged him to plead
13 guilty to this Information.

14 THE DEFENDANT: (Through interpreter)
15 No.

16 THE COURT: All right, proceed.

17 MR. KEEFE: Your Honor, at this time I
18 would like to call Agent Arnold Saefer..

19 WHEREUPON . . .

20 ARNOLD SAEFER
21 was called as a witness by and on behalf of the plaintiff,
22 and after having first been duly sworn, was examined
23 and testified as follows:

24 DIRECT EXAMINATION

25 BY MR. KEEFE:

1 Q Agent Saeffer, would you please relate
2 to His Honor the circumstances surrounding this case?

3 A Yes. On March 13, 1970, based on reliable
4 information, two agents of the Bureau of Narcotics and
5 Dangerous Drugs in New York purchased approximately 999
6 reams of heroin from Miguel Rodriguez, Joaquin Prada,
7 Carlos Tatanas and Raul Ortega.

8 And reliable information indicates that Raul
9 Ortega was the source of supply for this heroin, and
10 that it was obtained through and from him. A subsequent
11 analysis of the substance purchased revealed that it
12 was 91.2 percent pure heroin.

13 Q And what has happened to Miguel Rodriguez,
14 Joaquin Prada and Carlos Tatanas?

15 A They have been tried in the Southern
16 District of New York and convicted of narcotics viola-
17 tions, and are serving sentences in Federal Prisons.

18 MR. KEEFE: Do you have any questions?

19 MR. KOGEN: Just one question, because
20 this is sentencing, and I know you have to take into
21 consideration certain things.

22 CROSS EXAMINATION

23 BY MR. KOGEN:

24 Q When you say that this heroin was bought
25 from these two men, are you including Ortega? None of

1 these agents purchased from Ortega, did they?

2 A No.

3 THE COURT: Will you consider Ortega a
4 leader, or a follower?

5 THE WITNESS: I would consider him a
6 leader of the organization, Your Honor.

7 MR. KOGEN: May I ask a question on that?

8 Q (By Mr. Kogen) Is this based on what
9 a co-defendant or informant told you?

10 A This is based on the best intelligence
11 information that our bureau possesses, sir.

12 THE COURT: Which is pretty thorough.
13 They are getting to be very thorough.

14 MR. KOGEN: Nothing further, Judge.

15 THE COURT: Mr. Ortega, how do you plead
16 to this Information?

17 THE DEFENDANT: (Through interpreter)
18 Which Information, sir?

19 THE COURT: To the Information charged
20 him, that on or about January 20, 1970, through March 13,
21 1970, in Dade County, that he did purchase, dispense,
22 or distribute narcotics, one thousand grams of heroin,
23 not from the original stamped package, contrary to law.

24 THE DEFENDANT: (Through interpreter)
25 Is that the one that I said yes in the other one?

1 THE COURT: This is a substitute for the
2 other one.

3 THE DEFENDANT: (Through interpreter)
4 You are referring to a second one? In that last state-
5 ment, I said yes.

6 MR. KOGEN: Can I ask him a question,
7 Judge?

8 Q (By Mr. Kogen) Mr. Ortega, this morning
9 the Court advised you that the government was substitut-
10 ing an Information in place of the original indictment.
11 The Court then twice had read to you, through this
12 interpreter, a statement which is known as an Information.
13 Do you understand what I have said so far?

14 A (Through interpreter) The one that was
15 changed is the one that I say yes.

16 Q When you say yes, you mean you are pleading
17 guilty to the one that was substituted for the original
18 charge?

19 A (Through interpreter) Yes, sir.

20 THE COURT: Ask him if he does that under-
21 standingly, and after conferring at length with the
22 attorney, Mr. Kogen.

23 THE DEFENDANT: (Through interpreter)
24 Yes, sir.

25 THE COURT: The Motion to substitute will

1 be granted. The plea will be accepted.

2 MR. KEEFE: Your Honor, at this time the
3 Government would move to raise the Defendant's bond
4 from the present \$20,000.00 personal recognizance,
5 and with a ten percent does it, to a \$100,000.00 surety
6 bond.

7 THE COURT: The Motion will be granted.

8 MR. KOGEN: Judge, there may be a mis-
9 understanding here, and only as to the bond, not as to
10 anything else. We were able to come up with the bond
11 of a ten percent. Does that mean he has got to get a
12 bondsman to put up the bond, rather than put up his own
13 recognizance?

14 THE COURT: It means he will be put in
15 jail, probably.

16 MR. KEEFE: Either that, or substitute
17 equity, instead of cash, for it, which would mean he'd
18 be able to return that.

19 THE COURT: If he wants to be released
20 after we raise his bond to \$100,000.00 in this case,
21 which I will grant in view of the amount of heroin
22 involved, you may always apply for any modification
23 and change.

24 MR. KOGEN: I understand that, Judge.
25 There was no quibble about that. But I have been under

1 the impression, I may have been wrong, that what was
2 going to happen was that he would put up another \$8,000.00,
3 or somebody would put up \$8,000.00 in addition to the
4 \$2,000.00 he already has, and that would make up the
5 difference, rather than having to get a surety bond.
6 That's what I thought. Now, there was no misunderstanding
7 on the part of ---

8 THE COURT: It was my understanding he
9 has to put up \$100,000.00.

10 MR. KEEFE: Either way, surety or some
11 kind of equity.

12 THE COURT: Put it up in any kind of
13 acceptable security.

14 MR. KEEFE: That way, he can get it back.

15 MR. KOGEN: Okay. Thank you, Your Honor.

16 MR. KEEFE: I wonder if I could have a
17 copy or two, Your Honor, of the Information.

18 THE CLERK: I don't believe he's been
19 adjudicated yet.

20 THE COURT: We will do that now.

21 MR. KEEFE: Okay.

22 MR. KOGEN: Let me understand something,
23 Judge. I know that - here's the problem I've got; if
24 he puts up the \$10,000.00 on the type of bond he has
25 now, I mean, if he puts up \$10,000.00 on the type he's

1 been under, the \$20,000.00, and he's appeared in court
2 all the time, if he appears as we expect him to appear
3 at the time of sentencing, he would get all that money
4 back. Now, the way the bond reads now, if he gives a
5 bondsman \$10,000.00 or \$15,000.00, that's the type of
6 bond where he loses all that money, even if he shows up.

7 MR. KEEFE: Either that, or he can put
8 up equity, a home in the amount of \$100,000.00, and
9 receive that back when it comes time for ---

10 THE COURT: Or he can stay in and wait
11 on the sentence.

12 MR. KOGEN: That poses a very difficult
13 subject I didn't realize. We are not withdrawing anything,
14 but we will see if we can work it out.

15 THE COURT: Go out there with your client
16 and come right back in here, if you can.

17 MR. KOGEN: Let me have about ten minutes.
18 Young lady, come on with us a minute.

19 (Mr. Kogen left the courtroom with the
20 defendant and the interpreter, and upon returning, the
21 following proceedings were had:)

22 MR. KOGEN: I have discussed this, and
23 I am at fault, and I have been negligent in making
24 certain statements to my client. I had misread what
25 the Government had said to me. The Government has never

1 misinterpreted anything, I just misinterpreted what they
2 said, and I in some way have misled my client, and I
3 would respectfully request the Court to set the bond at
4 \$50,000.00, which he can make. He does have a home
5 here that he paid - the price of the home was \$28,000.00,
6 which he bought a year ago, and he can put \$8,000.00
7 cash. He does have three small children, one who goes
8 to school here, has a wife here living at home, and he
9 can put up the bond plus the home and security. Now,
10 if he was concerned about skipping, it would be just as
11 easy for him to put up the same amount of money, and he
12 would like to be able to come back, and his family.

13 THE COURT: He should start serving his
14 sentence.

15 MR. KOGEN: We would like to have thirty
16 days for him to take care of his business.

17 THE COURT: I can sentence him and give
18 him thirty days to finish up his affairs, on the present
19 bond.

20 MR. KOGEN: That would be fine, Judge.

21 THE COURT: If that's agreeable to the
22 District Attorney, but I don't want the District Attorney
23 to agree unless he feels it perfectly safe.

24 MR. KEEFE: Well, Your Honor, what would
25 be agreeable to the Government is if he was sentenced

1 today, and the Court gave him thirty days to wind up
2 his business with his family and so forth. But you
3 know, make the thirty days conditional on a \$50,000.00
4 bond, that would be acceptable to us.

5 MR. KOGEN: Inasmuch as the Court has
6 shown the compassion that we requested, why can't we
7 do that, give him thirty days, make it \$50,000.00, but
8 let him put up the balance of that \$50,000.00 in cash,
9 like he has now.

10 MR. KEEFE: If he wants to put up that
11 much in cash, that's fine.

12 MR. KOGEN: Not in cash, but ten percent
13 of \$50,000.00, but make it - let him put up \$10,000.00
14 additional cash and give him thirty days.

15 MR. KEEFE: In addition to the two he
16 already has, or the \$8,000.00 in addition to the two?

17 THE COURT: No, twelve.

18 MR. KEEFE: Twelve altogether?

19 THE COURT: I'm trying to save him money.

20 MR. KOGEN: I understand that, Judge.

21 MR. KEEFE: And also, Your Honor, we ask,
22 since it won't be any problem, but that he would put up
23 his house, also, as part of the bond.

24 MR. KOGEN: No problem.

25 MR. KEEFE: Okay.

1 THE DEFENDANT: (Through interpreter)

2 All right.

3 THE COURT: Explain to him, young lady,
4 we are trying to save him bond money.

5 THE DEFENDANT: (Through interpreter)
6 The only thing I have is a home to give over to the
7 bondsman.

8 THE COURT: By this way, he will not have
9 to pay the bonding company near as much money.

10 THE DEFENDANT: (Through interpreter)
11 Just putting up my home.

12 MR. KEEFE: And \$10,000.00 cash, which
13 he will get back.

14 MR. KOGEN: Which he will get back at
15 the end of thirty days.

16 THE COURT: As soon as he surrenders at
17 the end of thirty days, he will get his \$10,000.00 back.

18 THE DEFENDANT: (Through interpreter)
19 Where am I going to get the \$10,000.00 from?

20 MR. KEEFE: That's his problem.

21 MR. KOGEN: I thought - let me speak to
22 him privately, Judge; just take two minutes, Judge.

23 (Short break)

24 MR. KOGEN: Judge, I see what the problem
25 is now. He was going to get the \$10,000.00 to put up

1 in cash, by putting his home up as security.

2 THE COURT: That's between you and the
3 District Attorney. I want \$10,000.00 in cash, instead
4 of \$2,000.00, if he's going to be out thirty days.

5 MR. KOGEN: If he puts up another \$8,000.00
6 in cash, I mean it's the only way he can get it, is by
7 putting his home up as security.

8 MR. KEEFE: Have him sign that.

9 MR. KOGEN: Read this to him, and ask
10 him if he wants to sign it. If he has any objection,
11 let me know.

12 (Interpreter reads document to defendant
13 in Spanish.)

14 MR. KOGEN: All right?

15 THE INTERPRETER: Yes.

16 MR. KOGEN: Okay, sign your name here
17 (indicating).

18 Let me ask him one question. Maybe we can
19 resolve this.

20 (Off the record discussion)

21 MR. KOGEN: All right, Judge, I will tell
22 you what we can do, if the Government is agreeable to it;
23 rather than taking thirty days to adjust his business,
24 if we could put another \$8,000.00 cash up and make it
25 \$10,000.00, he may be able, and feels he can adjust his

1 business within two weeks.

2 THE COURT: All right.

3 MR. KEEFE: Your Honor, if he puts up
4 the additional \$8,000.00, we would like any business
5 that he owns or any property that he owns, or including
6 his house, unless he puts the house up truly for the
7 \$8,000.00, to be put up as part of his personal recogni-
8 zance.

9 THE COURT: He can put up \$10,000.00 in
10 cash and any equity he may have in real estate in Dade
11 County.

12 MR. KEEFE: In addition, we would ask as
13 a special provision of his being released for the two
14 weeks, that he report on a daily basis to the marshall.

15 MR. KOGEN: That's fair enough, Judge.

16 MR. KEEFE: Did he sign that?

17 THE CLERK: Yes.

18 MR. KOGEN: That would be fine; is that
19 right?

20 THE DEFENDANT: (Through interpreter)

21 Yes.

22 THE COURT: All right. Mr. Ortega-Alvarez,
23 how do you plead to the Information which I have read
24 to you?

25 THE DEFENDANT: (Through interpreter)

1 Yes, sir.

2 THE COURT: Guilty; is that right?

3 THE DEFENDANT: (Through interpreter)

4 Yes, sir.

5 THE COURT: The plea of guilty will be
6 accepted. Do you want to go through the questioning
7 again about his plea of guilty?

8 MR. KEEFE: No, sir. We are satisfied
9 with the voluntariness of his plea. We would request
10 that the Court sentence him at this time.

11 THE COURT: Mr. Kogen has reassured me
12 that he has explored the situation, and is satisfied
13 that the plea is voluntary; is that right?

14 MR. KOGEN: Yes, sir. I would like to
15 ask him one question, for the record, so we protect
16 everybody here.

17 Q (By Mr. Kogen) Have you ever suffered
18 any mental illness?

19 A (Through interpreter) No, sir.

20 Q You are not suffering under any mental
21 illness today, are you, to your knowledge?

22 A (Through interpreter) No, I don't have
23 any mental illness that I know of today, but I suffered
24 three operations about two weeks ago.

25 Q What?

1 A (Through interpreter) Suffered three
2 operations.

3 MR. KOGEN: That's physical. All right,
4 no further questions.

5 THE COURT: Again, let me ask you, is
6 he under any fear or confusion in entering this plea
7 of guilty?

8 THE DEFENDANT: (Through interpreter)
9 No.

10 THE COURT: The plea will be accepted.
11 Raul Serrapin Ortega-Alvarez, on your plea of guilty
12 to the charge contained in the Information filed against
13 you in Case Number - what's that number now?

14 MR. KEEFE: 71-281.

15 THE CLERK: 71-281.

16 THE COURT: 71-281. The Court finds and
17 adjudges you guilty, Counsel stating that he does not
18 desire a pre-sentence report; is that right?

19 MR. KOGEN: No, under the terms with the
20 U. S. Government, it will not be necessary for a pre-
21 sentence report, Your Honor.

22 THE COURT: Did you ask him if he wants
23 a pre-sentence report?

24 THE DEFENDANT: (Through interpreter)
25 Whatever you say.

1 MR. KOGEN: He turns to me and says what-
2 ever you say. You don't have to follow my decision.
3 I would recommend you not get a pre-sentence report.

4 THE COURT: It is the sentence of this
5 Court that you be bound over to the United States
6 Marshall or his authorized representative, and be im-
7 pressed in a penal institution of the United States
8 for a full term period of five years, until you have
9 been otherwise discharged from due process of law.

10 MR. KEEFE: And Your Honor, is that
11 subject to 420.880, under Title 18?

12 THE COURT: And the sentence will be
13 subject to provisions of 420.880 under Title 18, and he
14 may remain at liberty on his bond for a period of two
15 weeks, on the condition that an additional \$8,000.00
16 in cash to support the \$2,000.00 he has already put up
17 on bond, making a \$10,000.00 cash bond, on the further
18 condition that he pledge each and every tangible asset
19 in the way of real estate, including his home, as a
20 bond to command his appearance at the time, and surrender
21 to the marshall two weeks from this date. Such pledge
22 shall be subject to any previous commitments he may
23 have made and which are of record.

24 MR. KOGEN: One other provision you wanted,
25 that he appears before the marshall.

1 THE COURT: And that he report daily,
2 as a further condition, not later than twelve o'clock
3 each day, to the marshall of this court.

4 MR. KOGEN: Thank you, Judge.

5 THE COURT: I think that will help him a
6 little bit.

7 MR. KEEFE: So he will report for commit-
8 ment, Your Honor, on June 7; is that right?

9 THE COURT: On June 7, he will report for
10 commitment, not later than noon on that day, to the
11 marshall. If he does change his mind and wants to appeal,
12 the Court will fix another bond.

13 MR. KOGEN: All right, sir. Thank you,
14 Your Honor.

15 (Whereupon, these proceedings were
16 concluded.)
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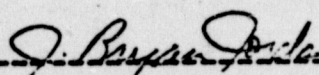
CERTIFICATE

STATE OF FLORIDA

COUNTY OF DADE

I, J. BRYAN JORDAN, Certified Shorthand Reporter and a Notary Public in and for the State of Florida at Large, hereby certify that the foregoing Hearing before the HON. EMETT C. CHOATE, to be a true and accurate transcription of the proceedings.

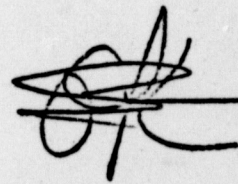
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 8th day of February, 1974.



J. BRYAN JORDAN,
Certified Shorthand Reporter
and Notary Public,
State of Florida at Large.
My commission expires:
March 15, 1976.

March 13, 1974 [88]
The Court:

I can only say at this time that the motion for directed judgment of acquittal on the basis of double jeopardy is denied as it is denied to selective prosecution or any doctrine that can be drawn from the Petit case.



SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

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JUL 29 1974
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

NO: 74-1388

RAUL ORTEGA-ALVAREZ a/k/a :
RAUL ORTEGA,

Appellant, :

vs.

A F F I D A V I T

UNITED STATES OF AMERICA, :

Appellee. :

_____ :

STATE OF FLORIDA)
) SS
COUNTY OF DADE)

BEFORE ME, the undersigned Notary Public,
personally appeared MAX B. KOGEN, ESQUIRE, who being by me
first duly sworn, states on his oath as follows:

1. That the printed Appendix in the above-
captioned cause was mailed on the 23rd day of July, 1974
to the Office of the Clerk, United States Court of Appeal,
Second Circuit, United States Courthouse, Foley Square,
New York, New York.

2. That the printed Appendix was mailed to
SHIRAH NEIMAN, Assistant United States Attorney, United
States Courthouse, Foley Square, New York, New York and to
HARVEY J. MICHELMAN, ESQUIRE, 250 West 57th Street, New York,
New York on this 26th day of July, 1974.

FURTHER AFFIANT SAYETH NOT:

Max B. Kogen
MAX B. KOGEN

SWORN TO and SUBSCRIBED
before me on this 26th day
of July, 1974.

Linda Robinson
NOTARY PUBLIC STATE OF FLORIDA

My Commission Expires:

LAW OFFICES
MAX B. KOGEN
CITY NATIONAL BANK BUILDING
MIAMI, FLORIDA 33130
TELEPHONE 377-4968

NOTARY PUBLIC, STATE of FLORIDA at LARGE
MY COMMISSION EXPIRES FEB. 20, 1976
BONDED thru MAYNARD SUNDING